

AMENDED IN SENATE JULY 2, 2012
AMENDED IN ASSEMBLY MAY 2, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2279

Introduced by Assembly Member Swanson

February 24, 2012

An act to amend Sections 41320.1 and 41326 of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2279, as amended, Swanson. School districts: emergency apportionments: trustees.

Existing law authorizes the governing board of a school district to request an emergency apportionment through the Superintendent of Public Instruction if the governing board of a school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Existing law provides that if a school district accepts an emergency apportionment the Superintendent shall, among other things, appoint a trustee who has recognized expertise in management and finance, and may employ, on a short-term basis, any staff necessary to assist the trustee. Existing law also provides that the trustee, and any necessary staff, shall serve until the emergency apportionment loan is repaid, the school district has adequate fiscal systems and controls in place, and the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable. Existing law authorizes the trustee, during the period of his or her service, to stay or rescind any action of

the local governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

This bill would instead provide that the trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place ~~and~~, the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable, *and the Superintendent decides to terminate the trustee's appointment*, but in no event, for less than 3 years. The bill would authorize the county superintendent of schools *that has jurisdiction over the school district*, after the trustee's period of service and until the loan is repaid, to stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. *The bill would require the county superintendent of schools to notify the Superintendent, as specified, within 5 business days of staying or rescinding an action of the governing board of the school district. If the Superintendent receives this notice from the county superintendent of schools, the bill would require the Superintendent to report to the Legislature, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.*

Existing law authorizes the Superintendent, within 5 years after an appointed trustee is removed, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would instead authorize the Superintendent, within 5 years after an appointed trustee is removed or the loan is repaid, whichever occurs later, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would also make numerous nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 41320.1 of the Education Code is
2 amended to read:

1 41320.1. Acceptance by the school district of the
2 apportionments made pursuant to Section 41320 constitutes the
3 agreement by the school district to all of the following conditions:

4 (a) The Superintendent shall appoint a trustee who has
5 recognized expertise in management and finance and may employ,
6 on a short-term basis, staff necessary to assist the trustee, including,
7 but not limited to, certified public accountants, as follows:

8 (1) The expenses incurred by the trustee and necessary staff
9 shall be borne by the school district.

10 (2) The Superintendent shall establish the terms and conditions
11 of the employment, including the remuneration of the trustee. The
12 trustee shall serve at the pleasure of, and report directly to, the
13 Superintendent.

14 (3) The trustee, and necessary staff, shall serve until the school
15 district has adequate fiscal systems and controls in place ~~and~~, the
16 Superintendent has determined that the school district's future
17 compliance with the fiscal plan approved for the school district
18 under Section 41320 is probable, *and the Superintendent decides*
19 *to terminate the trustee's appointment*, but in no event, for less
20 than three years. The Superintendent shall notify the county
21 superintendent of schools, the Legislature, the Department of
22 Finance, and the Controller no less than 60 days before the time
23 that the Superintendent expects these conditions to be met.

24 (4) Before the school district repays the loan, including interest,
25 the recipient of the loan shall select an auditor from a list
26 established by the Superintendent and the Controller to conduct
27 an audit of its fiscal systems. If the fiscal systems are deemed to
28 be inadequate, the Superintendent may retain the trustee until the
29 deficiencies are corrected. The cost of this audit and any additional
30 cost of the trustee shall be borne by the school district.

31 (5) Notwithstanding any other law, all reports submitted to the
32 trustee are public records.

33 (6) To facilitate the appointment of the trustee and the
34 employment of necessary staff, for purposes of this section, the
35 Superintendent is exempt from the requirements of Article 6
36 (commencing with Section 999) of Chapter 6 of Division 4 of the
37 Military and Veterans Code and Part 2 (commencing with Section
38 10100) of Division 2 of the Public Contract Code.

39 (7) Notwithstanding any other law, the Superintendent may
40 appoint an employee of the department to act as trustee for up to

1 the duration of the trusteeship. The salary and benefits of that
2 employee shall be established by the Superintendent and paid by
3 the school district. During the time of appointment, the employee
4 is an employee of the school district, but shall remain in the same
5 retirement system under the same plan as if the employee had
6 remained in the department. Upon the expiration or termination
7 of the appointment, the employee shall have the right to return to
8 his or her former position, or to a position at substantially the same
9 level as that position, with the department. The time served in the
10 appointment shall be counted for all purposes as if the employee
11 had served that time in his or her former position with the
12 department.

13 (b) (1) The trustee appointed by the Superintendent shall
14 monitor and review the operation of the school district. During the
15 period of his or her service, the trustee may stay or rescind an
16 action of the governing board of the school district that, in the
17 judgment of the trustee, may affect the financial condition of the
18 school district. ~~After~~

19 (2) *After* the trustee's period of service, and until the loan is
20 repaid, the county superintendent of schools *that has jurisdiction*
21 *over the school district* may stay or rescind an action of the
22 governing board of the school district that, in his or her judgment,
23 may affect the financial condition of the school district. ~~The~~ *The*
24 *county superintendent of schools shall notify the Superintendent,*
25 *within five business days, if he or she stays or rescinds an action*
26 *of the governing board of the school district. The notice shall*
27 *include, but not be limited to, both of the following:*

28 (A) *A description of the governing board of the school district's*
29 *intended action and its financial implications.*

30 (B) *The rationale and findings that support the county*
31 *superintendent of school's decision to stay or rescind the action*
32 *of the governing board of the school district.*

33 (3) *If the Superintendent is notified by the county superintendent*
34 *of schools pursuant to paragraph (2), the Superintendent shall*
35 *report to the Legislature, on or before December 30 of every year,*
36 *whether the school district is complying with the fiscal plan*
37 *approved for the school district.*

38 (4) *The Superintendent may establish timelines and prescribe*
39 *formats for reports and other materials to be used by the trustee to*
40 *monitor and review the operations of the school district. The trustee*

1 shall approve or reject all reports and other materials required from
2 the school district as a condition of receiving the apportionment.
3 The Superintendent, upon the recommendation of the trustee, may
4 reduce an apportionment to the school district in an amount up to
5 two hundred dollars (\$200) per day for each late or unacceptable
6 report or other material required under this part, and shall report
7 to the Legislature a failure of the school district to comply with
8 the requirements of this section. If the Superintendent determines,
9 at any time, that the fiscal plan approved for the school district
10 under Section 41320 is unsatisfactory, he or she may modify the
11 plan as necessary, and the school district shall comply with the
12 plan as modified.

13 (c) At the request of the Superintendent, the Controller shall
14 transfer to the department, from an apportionment to which the
15 school district would otherwise have been entitled pursuant to
16 Section 42238, the amount necessary to pay the expenses incurred
17 by the trustee and associated costs incurred by the county
18 superintendent of schools.

19 (d) For the fiscal year in which the apportionments are disbursed
20 and every year thereafter, the Controller, or his or her designee,
21 shall cause an audit to be conducted of the books and accounts of
22 the school district, in lieu of the audit required by Section 41020.
23 At the Controller's discretion, the audit may be conducted by the
24 Controller, his or her designee, or an auditor selected by the school
25 district and approved by the Controller. The costs of these audits
26 shall be borne by the school district. These audits shall be required
27 until the Controller determines, in consultation with the
28 Superintendent, that the school district is financially solvent, but
29 in no event earlier than one year following the implementation of
30 the plan or later than the time the apportionment made is repaid,
31 including interest. In addition, the Controller shall conduct quality
32 control reviews pursuant to subdivision (c) of Section 14504.2.

33 (e) For purposes of errors and omissions liability insurance
34 policies, the trustee appointed pursuant to this section is an
35 employee of the local educational agency to which he or she is
36 assigned. For purposes of workers' compensation benefits, the
37 trustee is an employee of the local educational agency to which
38 he or she is assigned, except that a trustee appointed pursuant to
39 paragraph (7) of subdivision (a) is an employee of the department
40 for that purpose.

1 (f) Except for an individual appointed by the Superintendent as
2 trustee pursuant to paragraph (7) of subdivision (a), the
3 state-appointed trustee is a member of the State Teachers'
4 Retirement System, if qualified, for the period of service as trustee,
5 unless the trustee elects in writing not to become a member. A
6 person who is a member or retirant of the State Teachers'
7 Retirement System at the time of appointment shall continue to
8 be a member or retirant of the system for the duration of the
9 appointment. If the trustee chooses to become a member or is
10 already a member, the trustee shall be placed on the payroll of the
11 school district for purposes of providing appropriate contributions
12 to the system. The Superintendent may also require that an
13 individual appointed as trustee pursuant to paragraph (7) of
14 subdivision (a) be placed on the payroll of the school district for
15 purposes of remuneration, other benefits, and payroll deductions.
16 For purposes of workers' compensation benefits, the
17 state-appointed trustee is deemed an employee of the local
18 educational agency to which he or she is assigned, except that a
19 trustee who is appointed pursuant to paragraph (7) of subdivision
20 (a) is an employee of the department for that purpose.

21 SEC. 2. Section 41326 of the Education Code is amended to
22 read:

23 41326. (a) Notwithstanding any other provision of this code,
24 the acceptance by a school district of an apportionment made
25 pursuant to Section 41320 that exceeds an amount equal to 200
26 percent of the amount of the reserve recommended for that school
27 district under the standards and criteria adopted pursuant to Section
28 33127 constitutes the agreement by the school district to the
29 conditions set forth in this article. Before applying for an
30 emergency apportionment in the amount identified in this
31 subdivision, the governing board of a school district shall discuss
32 the need for that apportionment at a regular or special meeting of
33 the governing board of the school district and, at that meeting,
34 shall receive testimony regarding the apportionment from parents,
35 exclusive representatives of employees of the school district, and
36 other members of the community. For purposes of this article,
37 "qualifying school district" means a school district that accepts a
38 loan as described in this subdivision.

39 (b) The Superintendent shall assume all the legal rights, duties,
40 and powers of the governing board of a qualifying school district.

1 The Superintendent, in consultation with the county superintendent
2 of schools, shall appoint an administrator to act on his or her behalf
3 in exercising the authority described in this subdivision in
4 accordance with all of the following:

5 (1) The administrator shall serve under the direction and
6 supervision of the Superintendent until terminated by the
7 Superintendent at his or her discretion. The Superintendent shall
8 consult with the county superintendent of schools before
9 terminating the administrator.

10 (2) The administrator shall have recognized expertise in
11 management and finance.

12 (3) To facilitate the appointment of the administrator and the
13 employment of necessary staff, for purposes of this section, the
14 Superintendent is exempt from the requirements of Article 6
15 (commencing with Section 999) of Chapter 6 of Division 4 of the
16 Military and Veterans Code and Part 2 (commencing with Section
17 10100) of Division 2 of the Public Contract Code.

18 (4) Notwithstanding any other law, the Superintendent may
19 appoint an employee of the state or the office of the county
20 superintendent of schools to act as administrator for up to the
21 duration of the administratorship. During the tenure of his or her
22 appointment, the administrator, if he or she is an employee of the
23 state or the office of the county superintendent of schools, is an
24 employee of the school district, but shall remain in the same
25 retirement system under the same plan that has been provided by
26 his or her employment with the state or the office of the county
27 superintendent of schools. Upon the expiration or termination of
28 the appointment, the employee shall have the right to return to his
29 or her former position, or to a position at substantially the same
30 level as that position, with the state or the office of the county
31 superintendent of schools. The time served in the appointment
32 shall be counted for all purposes as if the administrator had served
33 that time in his or her former position with the state or the office
34 of the county superintendent of schools.

35 (5) Except for an individual appointed as an administrator by
36 the Superintendent pursuant to paragraph (4), the administrator
37 shall be a member of the State Teachers' Retirement System, if
38 qualified, for the period of service as administrator, unless he or
39 she elects in writing not to become a member. A person who is a
40 member or retirant of the State Teachers' Retirement System at

1 the time of appointment shall continue to be a member or retirant
2 of the system for the duration of the appointment. If the
3 administrator chooses to become a member or is already a member,
4 the administrator shall be placed on the payroll of the school district
5 for purposes of providing appropriate contributions to the system.
6 The Superintendent may also require the administrator to be placed
7 on the payroll of the school district for purposes of remuneration,
8 other benefits, and payroll deductions.

9 (6) For purposes of workers' compensation benefits, the
10 administrator is an employee of the qualifying school district,
11 except that an administrator appointed pursuant to paragraph (4)
12 may be deemed an employee of the state or office of the county
13 superintendent of schools, as applicable.

14 (7) The qualifying school district shall add the administrator as
15 a covered employee of the school district for all purposes of errors
16 and omissions liability insurance policies.

17 (8) The salary and benefits of the administrator shall be
18 established by the Superintendent and paid by the qualifying school
19 district.

20 (9) The Superintendent or the administrator may, on a short-term
21 basis, employ at school district expense staff necessary to assist
22 the administrator, including, but not limited to, a certified public
23 accountant.

24 (10) The administrator may do all of the following:

25 (A) Implement substantial changes in the fiscal policies and
26 practices of the school district, including, if necessary, the filing
27 of a petition under Chapter 9 (commencing with Section 901) of
28 Title 11 of the United States Code for the adjustment of
29 indebtedness.

30 (B) Revise the educational program of the school district to
31 reflect realistic income projections and pupil performance relative
32 to state standards.

33 (C) Encourage all members of the school community to accept
34 a fair share of the burden of the fiscal recovery of the school
35 district.

36 (D) Consult, for purposes described in this subdivision, with
37 the governing board of the school district, the exclusive
38 representatives of the employees of the school district, parents,
39 and the community.

1 (E) Consult with, and seek recommendations from, the
2 Superintendent, county superintendent of schools, and the County
3 Office Fiscal Crisis and Management Assistance Team authorized
4 pursuant to subdivision (c) of Section 42127.8 for purposes
5 described in this article.

6 (F) With the approval of the Superintendent, enter into
7 agreements on behalf of the school district and, subject to any
8 contractual obligation of the school district, change existing school
9 district rules, regulations, policies, or practices as necessary for
10 the effective implementation of the recovery plans referred to in
11 Sections 41327 and 41327.1.

12 (c) (1) For the period of time during which the Superintendent
13 exercises the authority described in subdivision (b), the governing
14 board of the qualifying school district shall serve as an advisory
15 body reporting to the state-appointed administrator, and has no
16 rights, duties, or powers, and is not entitled to any stipend, benefits,
17 or other compensation from the school district.

18 (2) Upon the appointment of an administrator pursuant to this
19 section, the district superintendent of schools is no longer an
20 employee of the school district.

21 (3) A determination of the severance compensation for the
22 district superintendent of schools shall be made pursuant to
23 subdivision (j).

24 (d) Notwithstanding Section 35031 or any other law, the
25 administrator may, after according the employee reasonable notice
26 and the opportunity for a hearing, terminate the employment of
27 any deputy, associate, assistant superintendent of schools, or any
28 other school district level administrator who is employed by a
29 school district under a contract of employment signed or renewed
30 after January 1, 1992, if the employee fails to document, to the
31 satisfaction of the administrator, that before the date of the
32 acceptance of the apportionment he or she either advised the
33 governing board of the school district, or his or her superior, that
34 actions contemplated or taken by the governing board of the school
35 district could result in the fiscal insolvency of the school district,
36 or took other appropriate action to avert that fiscal insolvency.

37 (e) The authority of the Superintendent, and the administrator,
38 under this section shall continue until all of the following occur:

39 (1) (A) After one complete fiscal year has elapsed following
40 the school district's acceptance of a loan as described in subdivision

1 (a), the administrator determines, and so notifies the Superintendent
2 and the county superintendent of schools, that future compliance
3 by the school district with the recovery plans approved pursuant
4 to paragraph (2) is probable.

5 (B) The Superintendent may return power to the governing
6 board of the school district for any area listed in subdivision (a)
7 of Section 41327.1 if performance under the recovery plan for that
8 area has been demonstrated to the satisfaction of the
9 Superintendent.

10 (2) The Superintendent has approved all of the recovery plans
11 referred to in subdivision (a) of Section 41327 and the County
12 Office Fiscal Crisis and Management Assistance Team completes
13 the improvement plans specified in Section 41327.1 and has
14 completed a minimum of two reports identifying the school
15 district's progress in implementing the improvement plans.

16 (3) The administrator certifies that all necessary collective
17 bargaining agreements have been negotiated and ratified, and that
18 the agreements are consistent with the terms of the recovery plans.

19 (4) The school district has completed all reports required by the
20 Superintendent and the administrator.

21 (5) The Superintendent determines that future compliance by
22 the school district with the recovery plans approved pursuant to
23 paragraph (2) is probable.

24 (f) When the conditions stated in subdivision (e) have been met,
25 and at least 60 days after the Superintendent has notified the
26 Legislature, the Department of Finance, the Controller, and the
27 county superintendent of schools that he or she expects the
28 conditions prescribed pursuant to this section to be met, the
29 governing board of the school district shall regain all of its legal
30 rights, duties, and powers, except for the powers held by the trustee
31 provided for pursuant to Article 2 (commencing with Section
32 41320). The Superintendent shall appoint a trustee under Section
33 41320.1 to monitor and review the operations of the school district
34 until the conditions of subdivision (b) of that section have been
35 met.

36 (g) Notwithstanding subdivision (f), if the school district violates
37 a provision of the recovery plans approved by the Superintendent
38 pursuant to this article within five years after the trustee appointed
39 pursuant to Section 41320.1 is removed or after the loan is repaid,
40 whichever occurs later, the Superintendent may reassume, either

1 directly or through an administrator appointed in accordance with
2 this section, all of the legal rights, duties, and powers of the
3 governing board of the school district. The Superintendent shall
4 return to the governing board of the school district all of its legal
5 rights, duties, and powers reassumed under this subdivision when
6 he or she determines that future compliance with the approved
7 recovery plans is probable, or after a period of one year, whichever
8 occurs later.

9 (h) Article 2 (commencing with Section 41320) shall apply
10 except as otherwise specified in this article.

11 (i) It is the intent of the Legislature that the legislative budget
12 subcommittees annually conduct a review of each qualifying school
13 district that includes an evaluation of the financial condition of the
14 school district, the impact of the recovery plans upon the school
15 district's educational program, and the efforts made by the
16 state-appointed administrator to obtain input from the community
17 and the governing board of the school district.

18 (j) (1) The district superintendent of schools is entitled to a due
19 process hearing for purposes of determining final compensation.
20 The final compensation of the district superintendent of schools
21 shall be between zero and six times his or her monthly salary. The
22 outcome of the due process hearing shall be reported to the
23 Superintendent and the public. The information provided to the
24 public shall explain the rationale for the compensation.

25 (2) This subdivision applies only to a contract for employment
26 negotiated on or after June 21, 2004.

27 (k) (1) When the Superintendent assumes control over a school
28 district pursuant to subdivision (b), he or she shall, in consultation
29 with the County Office Fiscal Crisis and Management Assistance
30 Team, review the fiscal oversight of the school district by the
31 county superintendent of schools. The Superintendent may consult
32 with other fiscal experts, including other county superintendents
33 of schools and regional fiscal teams, in conducting this review.

34 (2) Within three months of assuming control over a qualifying
35 school district, the Superintendent shall report his or her findings
36 to the Legislature and shall provide a copy of that report to the
37 Department of Finance. This report shall include findings as to
38 fiscal oversight actions that were or were not taken and may include
39 recommendations as to an appropriate legislative response to
40 improve fiscal oversight.

1 (3) If after performing the duties described in paragraphs (1)
2 and (2), the Superintendent determines that the county
3 superintendent of schools failed to carry out his or her
4 responsibilities for fiscal oversight as required by this code, the
5 Superintendent may exercise the authority of the county
6 superintendent of schools who has oversight responsibilities for a
7 qualifying school district. If the Superintendent finds, based on
8 the report required—~~in~~ *by* paragraph (2), that the county
9 superintendent of schools failed to appropriately take into account
10 particular types of indicators of financial distress, or failed to take
11 appropriate remedial actions in the qualifying school district, the
12 Superintendent shall further investigate whether the county
13 superintendent of schools failed to take into account those
14 indicators, or similarly failed to take appropriate actions in other
15 school districts with negative or qualified certifications, and shall
16 provide an additional report on the fiscal oversight practices of the
17 county superintendent of schools to the appropriate policy and
18 fiscal committees of each house of the Legislature and the
19 Department of Finance.